STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Waukee Liberty Park Mall, LLC, Appellant, **v.** **Dallas County Board of Review,** Appellee.	**ORDER** **Docket No. 13-25-0378** **Parcel No. 12-33-201-032**

On May 5, 2014, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Russell Schoenauer, Sr. represented Appellant Waukee Liberty Park Mall, LLC. County Attorney Wayne Reisetter represents the Dallas County Board of Review, and Deputy Assessor Catherine Creighton appeared on its behalf at hearing. The Appeal Board, having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

Russell Schoenauer, Sr. represented Waukee Liberty Park Mall, LLC, the owner of a commercially classified property located at 306 Highway 6, Waukee, Iowa. The property is a shopping center operated as Liberty Park Plaza. Built in 1990, the subject property has 27,252 square-feet of gross building area (GBA) and 15 units totaling 26,896 square feet of net leasable area. The site is 3.15 acres with 52,000 square-feet of concrete paving.

The January 1, 2013, assessment was $1,791,630, allocated as $823,230 in land value and $968,400 in improvement value. Waukee Liberty Park Mall protested to the Board of Review claiming the property was assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), and asserted the correct total value was $1,210,000. Liberty Park also claimed there was a change downward in the value since the last assessment under sections 441.37(1)(b) and

441.35(2). However, in a re-assessment year, a challenge based on downward change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). The Board of Review denied the protest.

Liberty Park then appealed to this Board.

Schoenauer testified that he purchased the subject property in October 2012 for $1,210,000. The record indicates the contract date was October 2012, but the sale of the subject property actually occurred in December 2012. Schoenauer asserts that although he bought the property from a bank, it was not a foreclosure, and that he had bid on the property for two years prior to purchase. We note that despite Schoenauer's belief, the property was sold by a bank that obtained the property from foreclosure; and therefore, it would not be considered a normal sale for assessment purposes.

Schoenauer submitted an appraisal of the subject property. Steven S. Gardner and Randal L. Meiners, of Valuation Resources, Inc., Pleasant Hill, Iowa, completed the appraisal for financing purposes as part of the purchase. Gardner and Meiners determined an opinion of the fee simple market value of the subject property of $1,390,000 as of December 4, 2012. They developed the sales comparison and income approaches to value. They indicated a value of $1,430,000 (rounded) by the income approach and a value of $1,390,000 by the sales comparison approach. Although they indicate both approaches were given consideration, their final opinion of value is the same as the conclusion from the sales comparison approach.

The Board of Review also submitted a sales comparison and income approaches to value analysis completed by Dallas County Deputy Assessor Catherine Creighton. (Exhibit A and C). She arrives at an opinion of $1,580,600 by the sales comparison approach and a value of $1,809,500 (rounded) by the income approach.

A. Gardner and Meiners' Income Approach to Value

Gardner and Meiners first completed an income approach. They report the subject property had twelve occupied units and three vacant units as of the appraisal date. The majority of units are rented on a net-lease basis; however, one unit has a gross lease. A net lease is where the landlord passes all expenses to the tenant. (The Appraisal of Real Estate, 13th Edition. pg 451). Gardner and Meiners adjusted the gross lease to a net lease for comparison purposes. The appraisal report states the current average net-lease rate for the subject property is $6.65, which includes the anchor Sears Home Store, which has a current rent of $2.44 per-square-foot. (Exhibit 1, pg. 29.) They note Sears' rental rate is a below market rate and impacts the overall average lease rate for the subject. Gardner and Meiners provide comparable rental leases from the area and, after adjustments, determine a market net lease rate of $9.25 per-square-foot for the subject property. (Exhibit 1, pg. 30-35). In their reconciliation, Gardner and Meiners use $9.25 per-square-foot for determining potential gross income (PGI) for the majority of the property, but they also rely on the current lease rate for the Sears area. They reason that Sears is larger than typical for an anchor store, with 7137 square feet. (Exhibit 1. pg. 37). However, this is inconsistent with their previous analysis that concludes the Sears' rent is below market. (Exhibit 1, pg. 29). Ultimately, they determine a PGI of $200,204 (rounded). We note by including a below market rent, Gardner and Meiners artificially reduce the PGI and, as a result, the conclusion of value.

After calculating PGI, Gardner and Meiners determined a vacancy rate. They cite a 2012 CBRE/Hubbell Commercial Real Estate Market Survey that indicates vacancy rates in the western suburbs of Des Moines have a 23.1% vacancy for retail outlets. They note the survey did not list the City of Waukee separately but that the property's actual vacancy at the time of the appraisal was 11%, and "Waukee has seen an increase in demand for residential and commercial development over the last year." (Exhibit 1. Page 37.) Although they note a demand in the subject market, and a current vacancy rate of 11% after it had been bank-owned, Gardner and Meiners chose to use a higher vacancy rate of 18%, which is above the average of the actual rate and the source they relied on. We note a higher vacancy rate will result in lowering the value. The 18% vacancy rate they used also includes collection loss. After deducting for vacancy/collection loss, the effective gross income (EGI) is $164,167 (rounded).

From the EGI, it is typical to deduct expenses such as management, reserves, and leasing commissions, which Gardner and Meiners did. They also reduced the EGI by $25,000, or roughly 15.5%, for common area management (CAM) expenses, taxes, and insurance for the vacant space They did not provide explanation of how they arrived at this figure. Regardless, deducting the actual CAM expenses, taxes and insurance for the vacant space would not typically be done in an appraisal for ad valorem purposes. Instead, the ad valorem purpose is to capture the *market* value, and typically taxes would not be deducted as an expense but captured or reflected in a loaded capitalization rate. Gardner and Meiners determined a capitalization rate of 0.085%, which they used to capitalize the NOI to conclude a value of $1,430,000 (rounded) by the income approach.

B. Board of Review's Income Approach to Value

Creighton's income approach determined a PGI of $199,754, which is similar to the PGI determined by Gardner and Meiners. However, we note Creighton used actual rents, including a gross lease and she did not reduce this by the CAM, taxes and insurance expense that the owner would bear. Creighton testified that she relied on the Gardner and Meiners' appraisal for the management, reserves, leasing commission expenses, and capitalization rate, but determined a different vacancy/collection loss rate and differed on the vacancy applied to the EGI. However, she did not expense for taxes, which is the correct method for ad valorem analysis; but then she failed to load the expense into the capitalization rate.

C. Gardner and Meiners' Sales Comparison Approach to Value

Gardner and Meiners also completed the sales comparison approach to value. They included four sales for analysis, which included the sale of the subject property. We are critical of their use of the subject as a comparable in this case because they did not adjust the transaction for being a sale from a bank. We find it would be more appropriate to exclude this sale from the analysis; and therefore, we only focus on the three remaining sales.

Gardner and Meiners' Sale 2, located at 452 SE University Avenue, Waukee, sold for cash, and the appraisal indicates a tenant was the buyer. They do not explain if the buyer continues to occupy space, which could have had an effect on the sales price. Additionally, a sales analysis the Board of Review submitted indicates this sale was a foreclosure. (Exhibit A, pg. 2). Because there are questions regarding the transfer of this property, and the appraisal lacks analysis of the potential influence by a tenant purchaser, we are hesitant to rely on the sale as an indicator of the subject property's market value for the 2013 assessment.

Gardner and Meiners' Sale 3, located at 3510 Merle Hay Road, Des Moines, and Sale 4, at 1225 Copper Creek Drive, Pleasant Hill, were also used by the Board of Review in its sales comparison analysis. Sale 3 on Merle Hay Road is the most similar property in the appraisal. Specifically, it is similar in building area and age to the subject property, but has an inferior land-to-building ratio, for which Gardner and Meiners adjusted upward 5%. It indicates an adjusted value per-square-foot of $57.82.

Gardner and Meiners' Sale 4 is similar to the subject in size and age, but was adjusted 25% for age and condition. They also explain it is "superior" to the subject property, but provide no explanation for arriving at the 25% adjustment. Despite the lack of explanation, this sales adjusted value per-square-foot of $56.49 is similar to Sale 3.

Gardner and Meiners ultimately gave equal consideration to all four of the sales. However, as noted, we are critical of the subject's sale unadjusted for its sales conditions, and Sale 2, which was purchased by a tenant with no explanation or adjustment for this possible distorting factor. We find Sales 3 and 4 are reasonably comparable and indicate an adjusted value range of $56.49 to $57.82. The average of $57.16 for these comparable sales would indicate a value for the subject property of $1,558,000 (rounded), compared to Gardner and Meiners' conclusion of $1,390,000 that relied on the average adjusted price of all four sales.

D. Board of Review's Sales Comparison Approach to Value

The Board of Review also submitted a sales comparison analysis Creighton developed. (Exhibit A). Creighton considered five sales, which included the sale of the subject property. Unlike Gardner and Meiners, Creighton adjusted the subject property (Sale 1) for being a bank-owned property at time of transfer. Her adjusted sales price for the subject property to account for the abnormal sale is $55.50 per square foot. As previously noted, Creighton also used the sales located at 3510 Merle Hay Road and 1225 Copper Creek Drive.

Creighton's adjustments to the Merle Hay property are similar to Gardner and Meiners' adjustments. She concludes an adjusted value of $57.82 per square foot for the property.

Gardner and Meiners' analysis of the Copper Creek sale was based on a November 2011 arm's-length sale price of $2,300,000. However, the property resold in December 2012 for $1,725,000, shortly after they completed their report. The December 2012 sale was the result of foreclosure. Creighton used the more recent sale of this property, adjusting it for its abnormal transaction, as well as it being superior in age/condition, land-to-building ratio, and quality. After adjustments, she concluded an adjusted value of $52.03 per square foot. Gardner and Meiners valued the property, based on its first sale, at $79.28 per square foot. Because the transaction Creighton used was a bank sale, we hesitate to give it much reliance, even though she adjusted for this factor. Given the number of normal transactions in the record, we give the abnormal transactions less consideration even though some were adjusted for this factor.

Creighton also included sales located at 9735 University Avenue, Clive, from December 2012; and 2200 NW 159th Street, Clive, from December 2013. We note 2200 NW 159th Street sold a year after the assessment date. After adjustments, these sales had indicated values of $69.53 and $66.53, respectively.

The final range of adjusted values per-square-foot was between $52.03 and $69.53. Creighton weighted the five sales as follows:

	Address	Adjusted Value Per Square Foot	Weight Given	Weighted Value
Sale #1	Subject	$55.50	35%	$19.43
Sale #2	3510 Merle Hay Rd	$57.82	35%	$20.24
Sale #3	1225 Copper Creek Dr	$52.03	10%	$5.20
Sale #4	9735 University Ave	$69.53	10%	$6.95
Sale #5	2200 NW 159th St	$66.53	10%	$6.65
		Total Weighted Consideration		$58.47

Creighton explained she gave less weight to Sales 3, 4, and 5 because of the larger adjustments she applied to them. In her opinion, the adjusted sale's prices of the subject property and Sale 2 were the most comparable. She determined a final opinion of $58 per-square-foot for the subject property and arrived at an opinion of $1,580,600 by the sales comparison approach.

Creighton also submitted six additional sales: two from Dallas County and four from Polk County. Four of these sales are reported as bank sales; four sold well after the January 1, 2013, assessment date; none were adjusted for differences; and Creighton gave them no consideration in her final opinion. For these reasons, we also give them no consideration.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id*. The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin Cnty. Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id*. Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. §441.21(1)(b). However, the "sales price of the subject property in a normal sales transaction . . . does not *conclusively* establish [market] value." *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289, 290 (Iowa 1996). Conversely, sale prices of properties in abnormal transactions not reflecting market value must not be taken into account, or must be adjusted to eliminate the effect of factors which distort market value, including . . . foreclosure or other forced sales. § 441.21(1)(b). If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

At hearing, Schoenauer asserted the sales price of the property should be considered the fair market value as of January 1, 2013. However, the record indicates the transaction was abnormal because it was bank-owned at the time of sale. There were no adjustments to the sale to account for this distorting factor and for that reason, we find the subject's sale price does not conclusively establish its market value for assessment.

Both parties submitted an appraisal or analysis that values the subject property under the income approach. Gardner and Meiners' appraisal was for mortgage lending purposes rather than ad valorem purposes. They did not handle property taxes the way they are typically addressed in an ad valorem appraisal. Further, they acknowledged the subject's market is seeing increased demand in commercial activity yet still used a vacancy rate higher than market. Likewise, the Board of Review's income analysis flawed, because it used actual income and did not use a loaded capitalization rate.

In addition, Iowa law prefers the sales comparison approach to value. *Compiano v. Polk County Board of Review*, 771 N.W.2d 392, 398 (Iowa 2009). There are numerous sales in the record that indicate the sales comparison approach can conclusively establish the fair market value of the subject property. For these reasons we do not to rely on either income analysis as a reliable indicator of the subject property's market value.

Turning to the sales comparison analyses, Gardner and Meiners' analysis used two sales that we find are not reflective of arm's-length transactions. Their remaining sales appear to be normal transactions with appropriate adjustments and indicate an adjusted value range from $56.49 to $57.82. The average of these two sales would indicate a value for the subject property of $1,558,000 (rounded), compared to their conclusion of $1,390,000. Thus, we do not find Gardner and Meiners' appraisal to be the best evidence in the record of the fair market value of the subject property as of the 2013 assessment.

However, the Board of Review also submitted a sales comparison analysis. The Board's sales comparison approach indicates a value of $1,580,600. Although two of the sales included in the analysis are adjusted abnormal sales, even excluding these, we find it is the best evidence of the subject's fair market value, as of January 1, 2013.

THE APPEAL BOARD ORDERS the assessment of the property located at 306 Highway 6, Waukee, Iowa, is modified to a total value of $1,580,600, as of January 1, 2013. The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Dallas County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 6th day of June 2014.

Karen Oberman
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Karen Oberman, Presiding Officer

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